



**Legislative Bulletin.....February 16, 2005**

**Contents:**

**H.R. 310** — Broadcast Decency Enforcement Act of 2005

**Summary of the Bills Under Consideration Today:**

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$0

Total Change in Revenue: A potential increase of \$5 million over five years

Total Change in Mandatory Spending: 0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0\* (see below)

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

**H.R. 310 — Broadcast Decency Enforcement Act of 2005 (Rep. Upton)**

**Order of Business:** The bill is scheduled for consideration on Wednesday, February 16, 2005, under a structured rule, with one amendment, and a motion to recommit made in order. The amendment can be temporarily viewed at <http://www.house.gov/rules/109rulehr310.htm>

**Summary:** H.R. 310 amends the Communications Act of 1934 (47 U.S.C. 503) to add a new provision for broadcast station licensees or permittees or an applicant that is found by the FCC to have broadcast “obscene, indecent or profane material” to be fined up to \$500,000 for each violation (up from the current maximum of approximately \$25,000). The bill also amends and increases fines for individuals up to \$500,000 for each violation (up from the current maximum of \$11,000). An individual may not be let off from a fine if he is found to have “willfully or intentionally” uttered the obscene, indecent, or profane material.

Within 180 days after the date of receiving the allegation, the FCC must act and the fines or a settlement must be entered into within 270 days after the receipt of the allegation. If a licensee is

found by the FCC to be in violation in three or more proceedings during the term of its broadcast license, then an FCC proceeding to consider license revocation is automatically triggered.

In deliberating the level of fines, the bill lays out the following criteria for the FCC to consider culpability:

- Whether the material uttered was live or recorded, scripted or unscripted;
- Whether the violator had a “reasonable opportunity” to review the programming;
- Whether the violator had a time delay;
- The size of the viewing or listening audience; and
- Whether the utterance was during the children’s programming hours.

The bill also specifies considerations for ability to pay the fine, such as if the violator is a company or individual, the size of the company, and the size of its market. There is an exception for station licensees or permittees that receive programming from “network organizations” and were not, for example, given “a reasonable opportunity to review the programming in advance.” The Commission, under H.R. 310 may require a violator to broadcast public service announcements (to up to five times the audience size as heard the utterance) “that serve the educational and informational needs of children.” It may also consider the violation under license renewal and disqualification procedures.

H.R. 310 adds new provisions to the FCC’s annual report to Congress, for example, requiring inclusion of the number of complaints received by the Commission, the number dismissed or denied, and details on the cases acted upon including forfeitures. There is also a Sense of Congress in the bill that the broadcast television stations “should reinstitute a family viewing policy for broadcasters” similar to one that existed from 1975 to 1983 that included the family viewing hour.

The bill applies the original severability clause from the 1934 Act to all changes made in this bill. The clause states: “If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.”

**Upton/Markey Manager’s Amendment:** The amendment makes several changes including:

- requiring the financial impact on an individual to be considered during the penalty process;
- clarifying that in addition to being willful or intentionally made, the indecent statement must have been made knowing that it would be broadcast;
- requiring the FCC’s annual indecency enforcement report and the GAO’s report include data going back to 2000;
- requiring that within nine months the FCC update its policy statement to provide industry guidance regarding the laws and regulations concerning broadcast indecency.

**Additional Information:** According to the Committee, federal law specifically prohibits the utterance of “any obscene, indecent or profane language by means of radio communication” (18 U.S.C. 1464), and the FCC is charged with enforcing this statute (47 U.S.C. 503). By regulation, the FCC prohibits the broadcast of obscene material at any time, and indecent material during the hours of 6 a.m. to 10 p.m. (47 C.F.R. 73.3999), the time period when children are most likely to be watching television and listening to the radio.

**Committee Action:** The bill was introduced on January 25, 2005, and referred to the House Energy and Commerce Committee. The Committee did not consider the bill.

**Cost to Taxpayers:** CBO estimates that federal revenues resulting from the penalties in H.R. 310 would increase by less than \$500,000 in 2005 and by approximately \$1 million per year over the 2006-2010 period (\$5 million total). The increase in collections actually could be much higher or lower, depending on the number of penalties levied from year to year. The FCC did not collect any penalties for indecency violations in 2003; it collected \$2.5 million in 2004; and has not collected any penalties in the first four months of 2005.

**Does the Bill Create New Federal Programs or Rules?:** No. The bill increases current fines and penalties for FCC violations and modifies existing requirements for the FCC's annual report.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** H.R. 310 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would be unlikely to impose costs on state, local, and tribal governments, nor does it contain any new private-sector mandates. The bill contains a new potential penalty requiring violating companies to broadcast public service announcements to children, but CBO does not consider this a new mandate as defined under the law.

**Constitutional Authority:** The Energy and Commerce Committee in Report #109-05 finds authority under Article I, Section 8, clause 3 of the Constitution, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

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